



**REPORT  
OF THE  
FAIRFAX COUNTY  
HUMAN RIGHTS COMMISSION  
2003**



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REPORT OF THE  
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## STATEMENT OF PURPOSE

In July 1974, the Fairfax County Board of Supervisors adopted the Human Rights Ordinance, establishing the Human Rights Commission “to institute an affirmative human rights program of positive efforts to eliminate discrimination and provide citizen recourse for discriminatory acts.”

## INTRODUCTION

- I. This is a report of matters generated under provisions of Chapter 11, Human Rights Ordinance, Code of the County of Fairfax, Virginia, focusing upon the activities of the staff under the administration of the Executive Director, as well as the Human Rights Commission. While this report will concentrate principally on the most immediate fiscal year, FY 2003, we have also selected a ten-year envelope of data, which reflects the trends, behaviors, and central tendencies of the relevant activities.
- II. Case load adjudication is the primary focus of work performed by the Commission appropriately categorized as “cases” and “charges.” The term “case” refers to all activities generated by a complaint filed with this Commission. Each case may contain several charges; and each charge must be investigated, analyzed and decided upon separately.

## EXECUTIVE SUMMARY

### Commission’s Workload and Staffing

The Commission processed 665 cases in FY 1994 and 1021 cases in FY 2003<sup>1</sup>, representing a 57 percent increase over ten years. The Commission had 16 staff members in FY 1994 and 19 staff members in FY 2003, representing a 19 percent increase in staff. During this ten-year period, the Board authorized the addition of two new investigators and a Fair Housing Program Manager to manage the County’s Fair Housing Program.

There was an 11.5 percent growth in the number cases between FY 2001 and FY 2002, and the expectation was that this trend would continue in FY 2003. That did not happen. Instead, we experienced a 22 percent decrease in the number of cases between FY 2002 and FY 2003. In FY 2001 the Executive Director was successful in recruiting very talented new staff members to join the excellent staff already on board. For these reasons, it was anticipated that staff would be able to reduce the pending inventory so that the new cases could receive quicker attention and get resolved faster. However, the Commission received 11.5% (53) more cases in FY 2002 than it received in FY 2001. The increase in cases, in addition to staff turnover (lost 1.2 staff equivalents) resulted in a 6% increase in cases pending at the end of FY 2002. However, the agency was able to reduce the pending inventory by the end of FY 2003 by 12 percent. A total of 620 cases were pending at the end of FY 2002, and 551 cases were pending at the end of FY 2003. The good news is that despite the loss of staff, the agency closed more cases in FY 2002 than it did in

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<sup>1</sup> 371 cases pending at the end of FY 1992 are added to 294 cases received in FY 1993 to get the total of 665 cases processed in FY 1993. 620 cases pending at the end of FY 2002 are added to 401 cases received in FY 2003 for a total of 1021 cases processed in FY 2003.

FY 2001, and the average number of days needed to resolve the cases was 408, down from 422 in FY 2001. In our last annual report we believed that the average number of days needed to resolve cases in FY 2002 would hover around 400 days also due to the age of the pending inventory. We were right. We also believed that if the staff was able to reduce the pending inventory by the end of FY 2002, the average time it takes to resolve cases will begin to decrease. Unfortunately, the pending inventory increased from 584 cases at the end of FY 2001 to 620 cases at the end of FY 2002. That changed in FY 2003 when the staff reduced the pending inventory to 551 cases. This is a significant reduction for only the second time in the last ten years and is due largely to a parallel reduction in the number of new cases received in FY 2003 (401) when compared to FY 2002 (515).

The average age of the pending inventory of cases at the end of the year for the last three years is as follows:

FY 2001 – 435 days old

FY 2002 – 449 days old

FY 2003 – 501 days old

According to the EEOC, the average age of the pending inventory across the nation at the state and local agencies at the end of FY 2003 was 594 days old. That makes the age of the cases in this agency quite a bit younger than the national average. However, the Commission and staff recognize that the trend of cases getting older is not the trend we want. Therefore, the Commission has directed the Executive Director to focus on this concern and find ways to reduce the age of the pending inventory in the office.

### Housing Discrimination

The Board of Supervisors passed amendments to the County's Human Rights Ordinance in October 2000 designed to bring the Ordinance into substantial equivalency with the Virginia Fair Housing Act and the Federal Fair Housing Amendments Act. The Commission has partnered with the County Attorney in submitting the necessary information to the U. S. Department of Housing and Urban Development (HUD) seeking substantial equivalency certification. Upon receipt of this certification the County will have the opportunity to enter into a contract with HUD that will provide funds to the Commission to pay for processing fair housing cases that are jurisdictional with both the County and HUD. In FY 2002 and FY 2003, the Commission continued its efforts to obtain substantial equivalency with HUD, through ongoing discussions and correspondence, with regard to the request for certification to address outstanding issues. As of the end of FY 2002, the Commission was awaiting a decision from HUD as to whether additional revisions to the Ordinance were necessary. In FY 2003 the necessary editions to the Ordinance were made by the Board of Supervisors and submitted to HUD for review and approval.

The Commission conducted Fair Housing Sales Tests on the basis of race and national origin. Subsequent to the testing, the Commission issued a Fair Housing Sales Test Report, available to the public in printed form as well as posted to the Commission's web site.

The Commission continued its actions to affirmatively further Fair Housing which included but was not limited to: training employees of the rental housing industry; creating three housing brochures, including the brochure “Fair Housing It’s Everyone’s Right” that has been translated into Spanish, Vietnamese, Korean, Urdu, Farsi, and Arabic; participating in the 1<sup>st</sup> Annual Fairfax County Affordable Housing Fair by preparing a seminar presentation and being available at a table display for questions and to distribute literature (an estimated 1000 citizens attended); creating a subcommittee to study the issue of Source of Income protection in Fairfax county; participating in Fair Housing training for the Northern Virginia Apartment Owners Association. In addition, the Commission participated in a multi-jurisdictional Fair Housing workgroup to coordinate fair housing strategies for jurisdictions in Northern Virginia, facilitated training for Commission enforcement staff in substantive fair housing law and conciliation processes, and received substantive training regarding fair housing law

### Outreach Programs

In recent years the Fairfax County Human Rights Commissioners have continued their efforts to publicize the Human Rights Ordinance and the work of the Commission and to provide for a forum to discuss the issue of civil rights throughout the county. The Commission staff has made presentations in fair housing seminars, worked with diversity councils at local corporations and made presentations to affected communities both in person and on public access television. Among its major outreach programs in FY 2002 and FY 2003, the Commission partnered with the Department of Information Technology and redesigned its web pages on the County’s web site. Again, in FY 2002 and FY 2003 the Commission successfully sponsored its annual human rights awards banquets honoring members of our community who have done outstanding work promoting human rights in the County. In addition, the staff gave presentations at ESL classes throughout the County regarding the Ordinance and its protections in Fairfax County.

### Sexual Orientation Discrimination

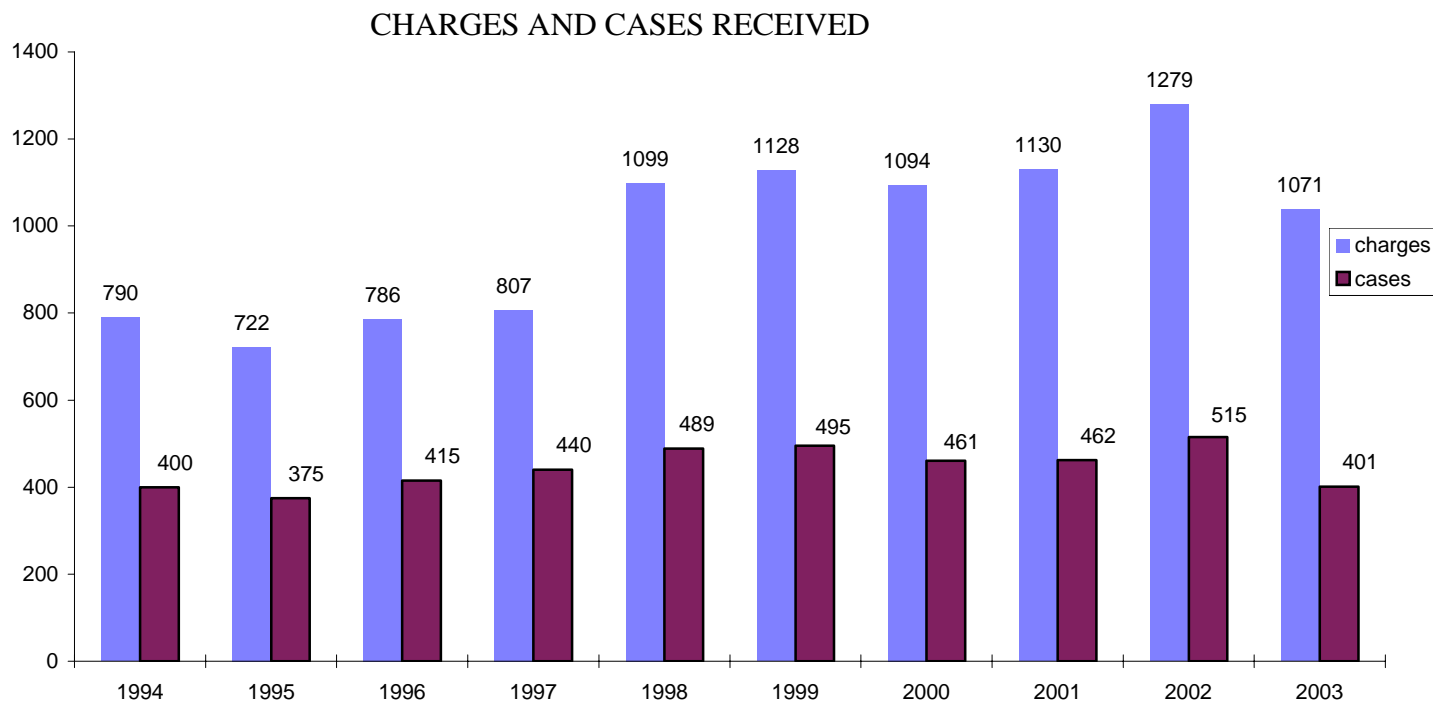
The Fairfax County Human Rights Ordinance does not currently provide protection against such discrimination in employment, housing, public accommodations, credit, or education. Individuals facing discrimination based on their actual or perceived sexual orientation at this time have no recourse, either at the county level or at the state or federal level. Virtually all other jurisdictions in the Washington metropolitan area now cover this class in their human rights statutes. Of all the local jurisdictions that have human rights laws, Fairfax County and Prince William County do not provide such coverage.

The Commission issued a report on Sexual Orientation Discrimination in May 2000 recommending amendment of our ordinance by adding protection against sexual orientation discrimination. This recommendation was adopted and legislation was introduced in the legislature in 2001, 2002, and 2003 and subsequently defeated. We request that the Board approve the re-introduction of similar legislation in the next legislative session.



## SECTION I

Figure 1



The general attitude of the slope of this graph is upward, with charges showing approximately a 2-to-1 ratio.<sup>2</sup> There was an increase in new cases received in FY 2002 of 11 percent, yet there was 22 percent decrease in new cases received in FY 2003. At this time, it is difficult for us to tell if this is a trend or what the reasons there may be for this dramatic decrease in the receipt of new cases.

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<sup>2</sup> A case may contain more than one allegation of a violation of the Ordinance. Each discrete allegation is referred to as a charge in this chart.

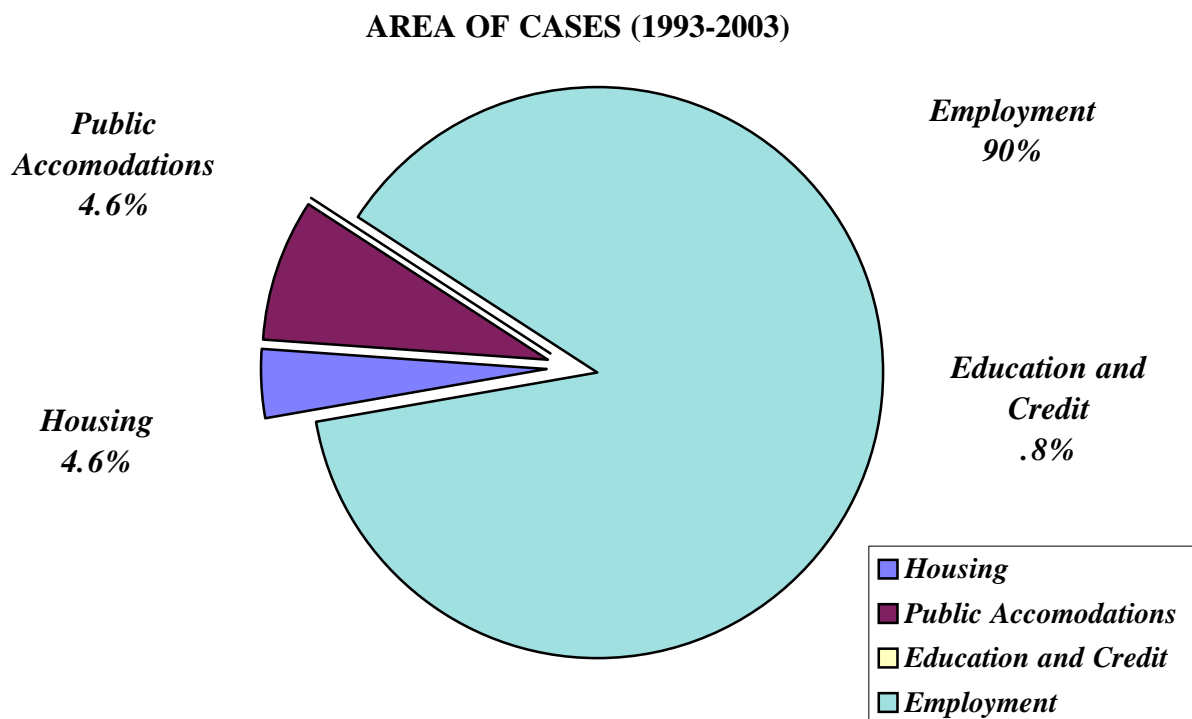


Figure 2

This chart depicts a breakdown of the major categories of cases received during the last decade. As you can see employment, comprising 90 percent of the total continues to be the principal concern among persons filing allegations of discrimination. Figures 3 through 5 reflect the actual numbers of cases in these relevant categories. One will note that the decrease in FY 2003 of cases received when compared to FY 2002 is across the board in all categories. However, it appears that the greatest decrease in cases received was in housing cases which experienced a decrease of 62.5 percent. While it unclear as to the actual reason for the decrease in housing cases; however, it is believed that the decrease in employment cases was affected by the local economy which during FY 2003 began to rebound.

Figure 3  
**HOUSING CASES RECEIVED**

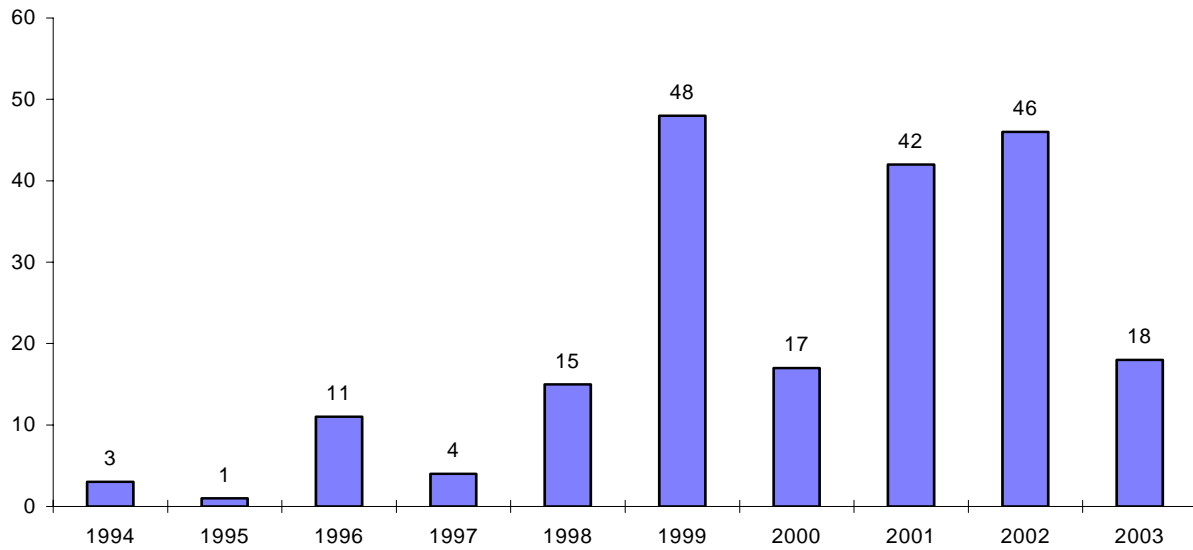


Figure 4  
**PUBLIC ACCOMMODATION CASES RECEIVED**

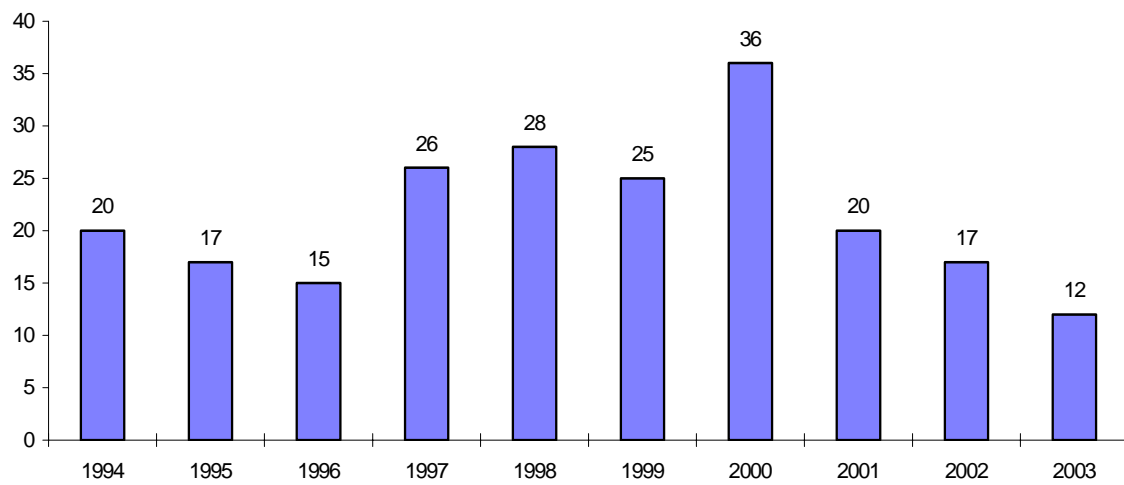


Figure 5

**EMPLOYMENT CASES RECEIVED**

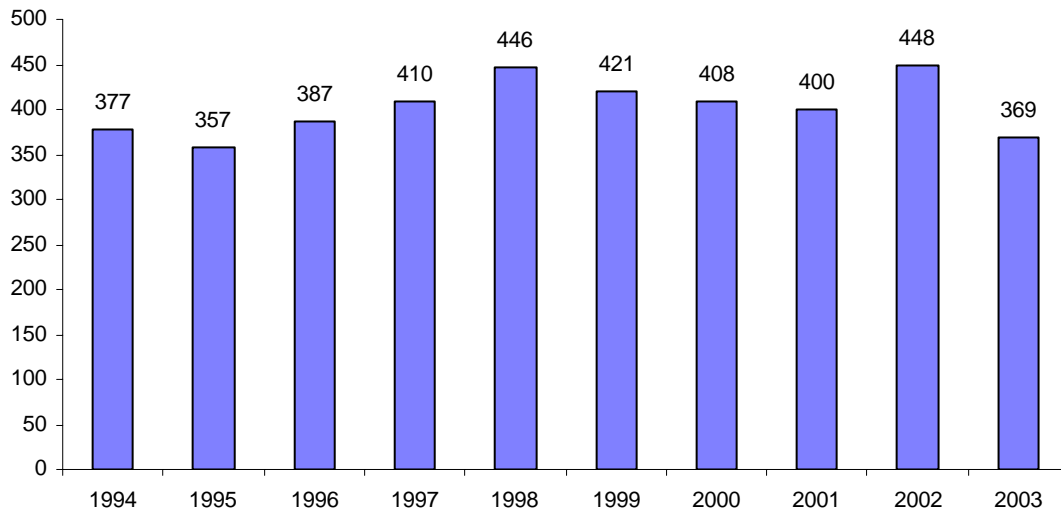
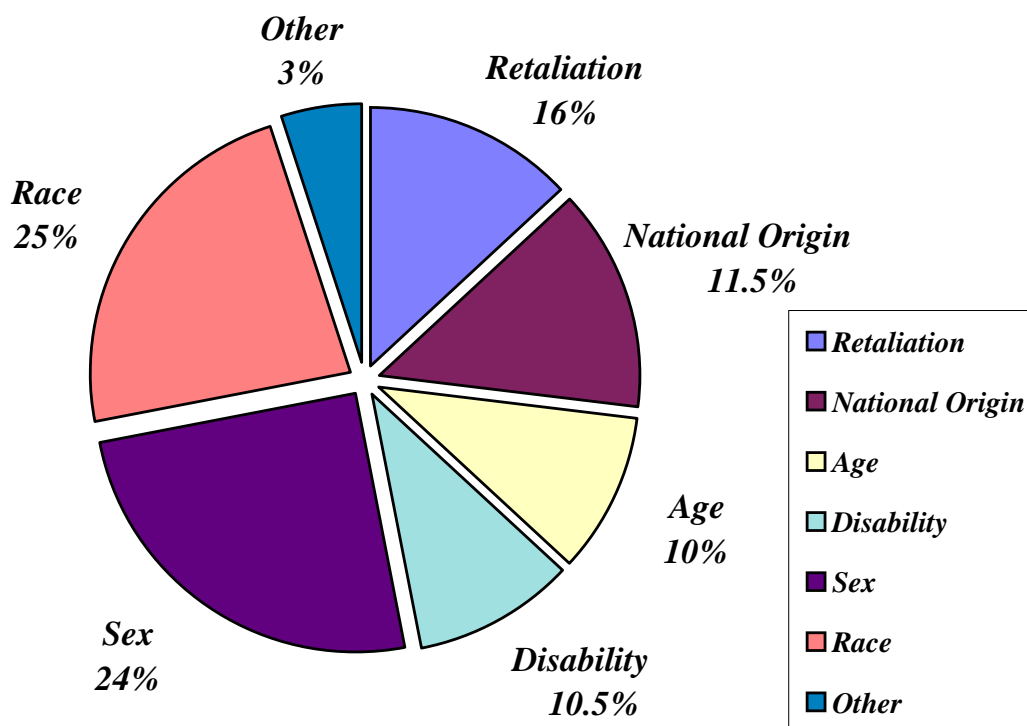


Figure 6

### BASES OF CHARGES (1994-2003)



Among all of the charts and graphs in this report, Figure 6 tells the most compelling story of why individuals believe they are discriminated against.<sup>3</sup> The first conclusion is that persons are more likely to believe that they are discriminated against because of how they look and sound. This is supported by the groupings of charges filed under Race and National Origin, 25 percent and 11.5 percent respectively.

A second conclusion is that Sex is another major concern among complaints of discrimination, with 24 percent of the charges filed. By combining the numbers of cases which are distributed under these three prohibitive bases of discrimination, it appears that how individuals look and sound account for 64 percent of all charges.

The next most significant cluster of charges fall under the prohibitive bases of Retaliation at 16 percent. These charges are filed against respondents or their agents who take retaliatory actions against individuals who previously exercised their rights under the county ordinance, state law, or federal statute.

The following Figures 7-8-9-10-11, 12, and 13 show the actual numbers of charges filed under all the relevant bases of prohibitive discrimination.

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<sup>3</sup>The category of “Other” bases in this chart includes familial status, marital status and religion.

Figure 7

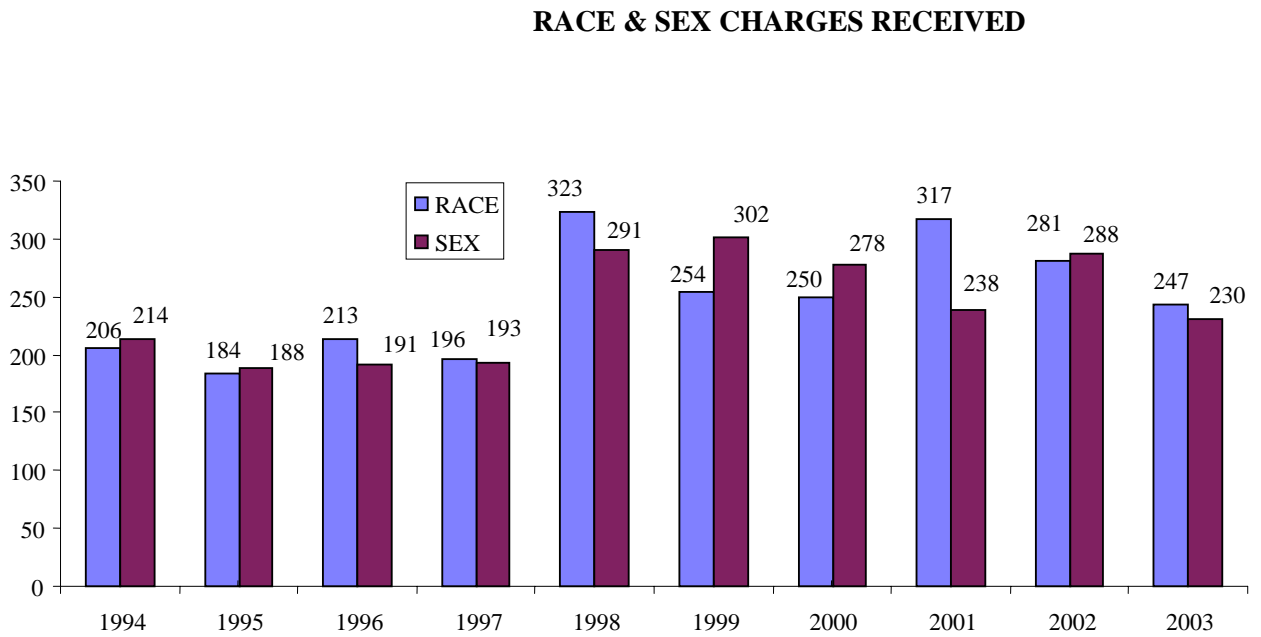


Figure 8

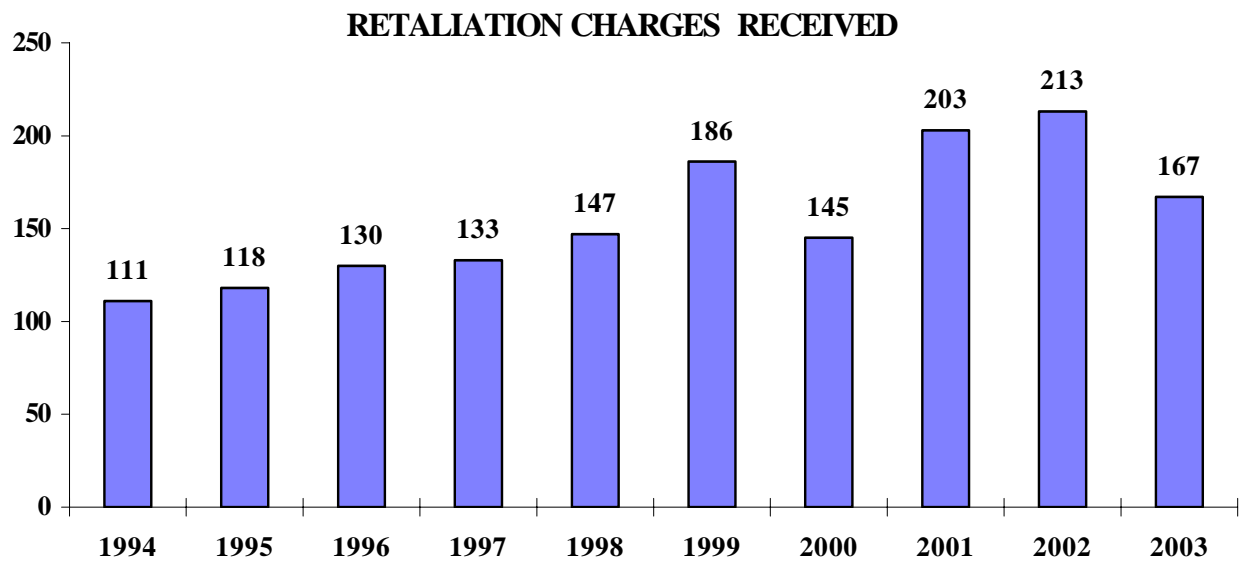


Figure 9

**NATIONAL ORIGIN CHARGES RECEIVED**

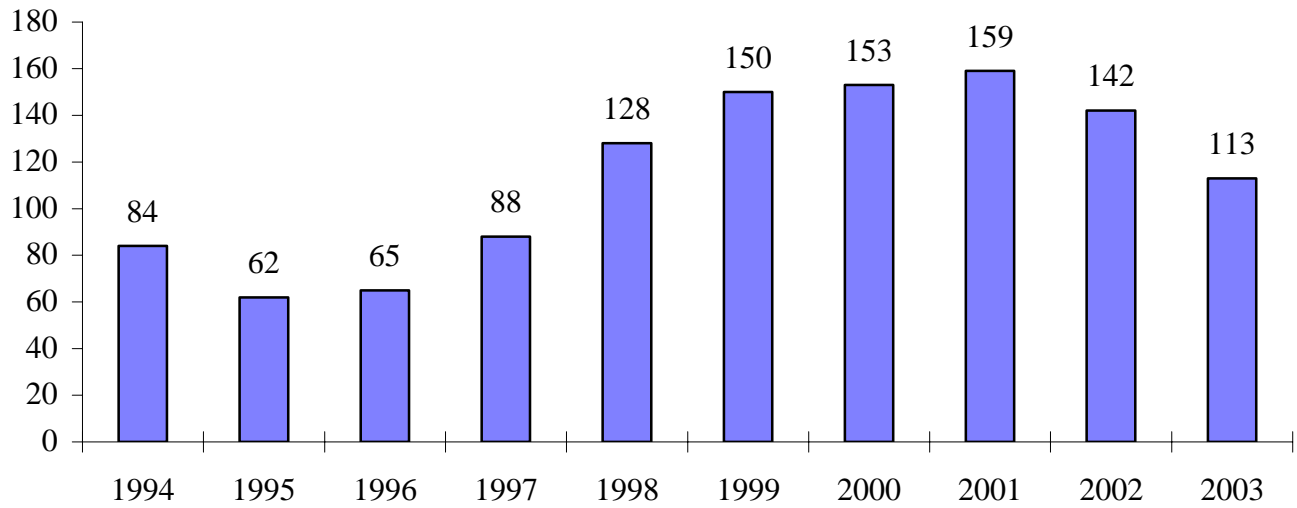


Figure 10

**DISABILITY CHARGES RECEIVED**

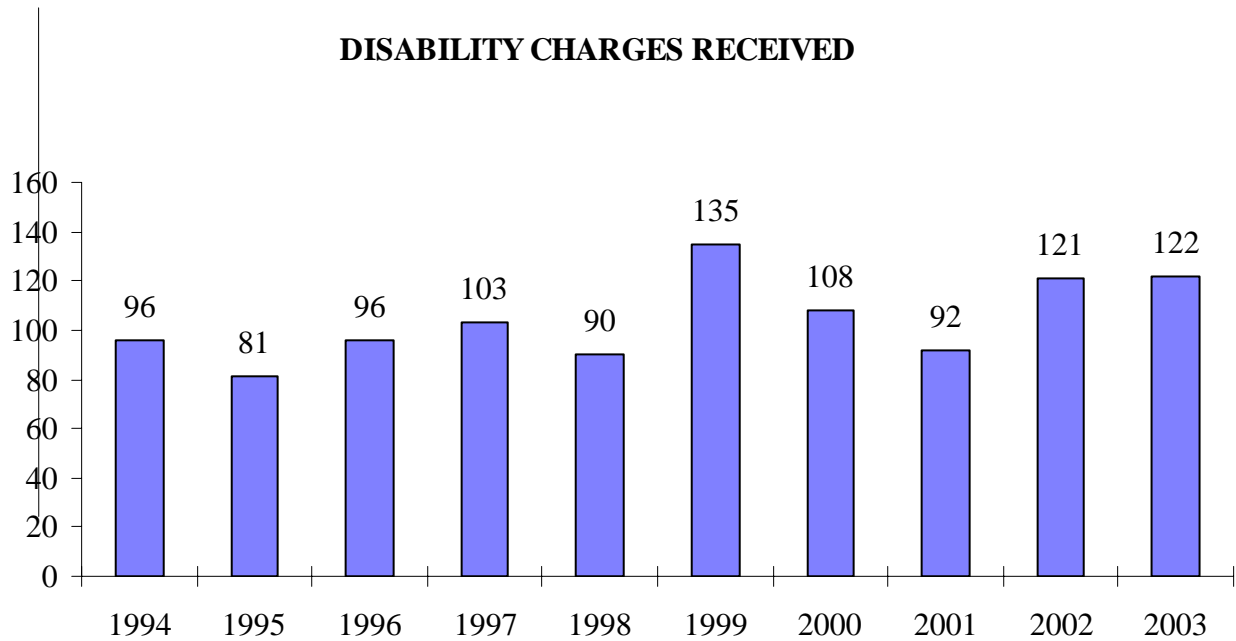


Figure 11

### AGE CHARGES RECEIVED

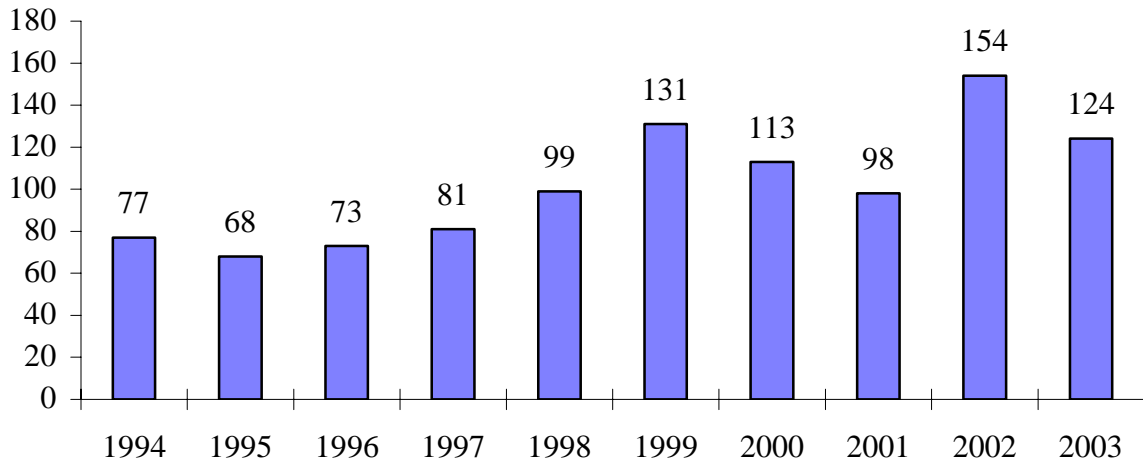


Figure 12

### RELIGIOUS DISCRIMINATION CHARGES RECEIVED MARITAL STATUS CASES RECEIVED

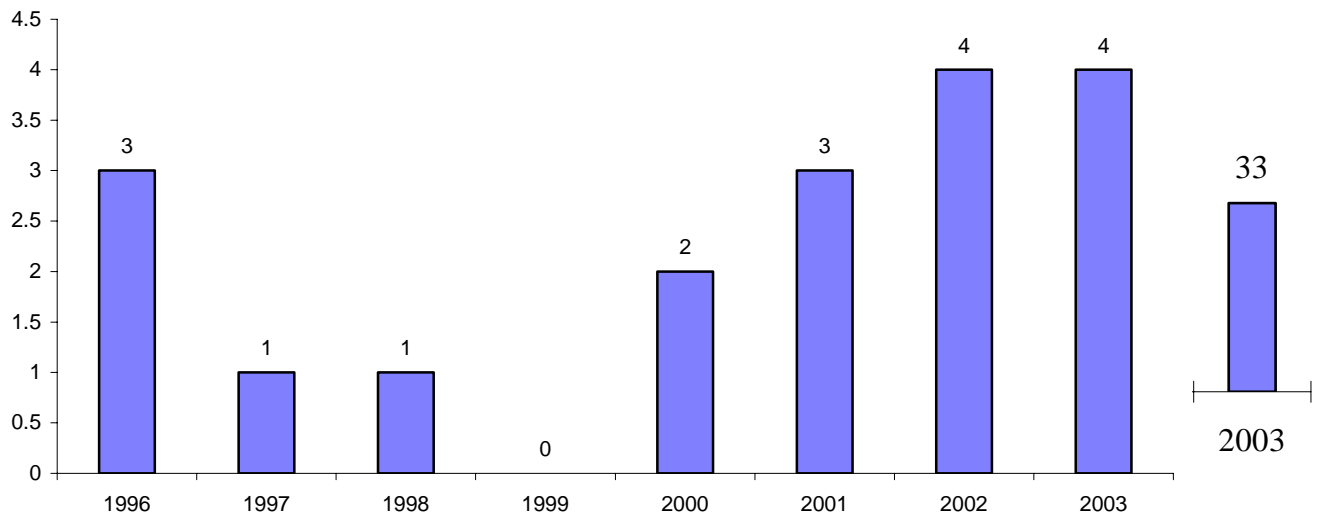
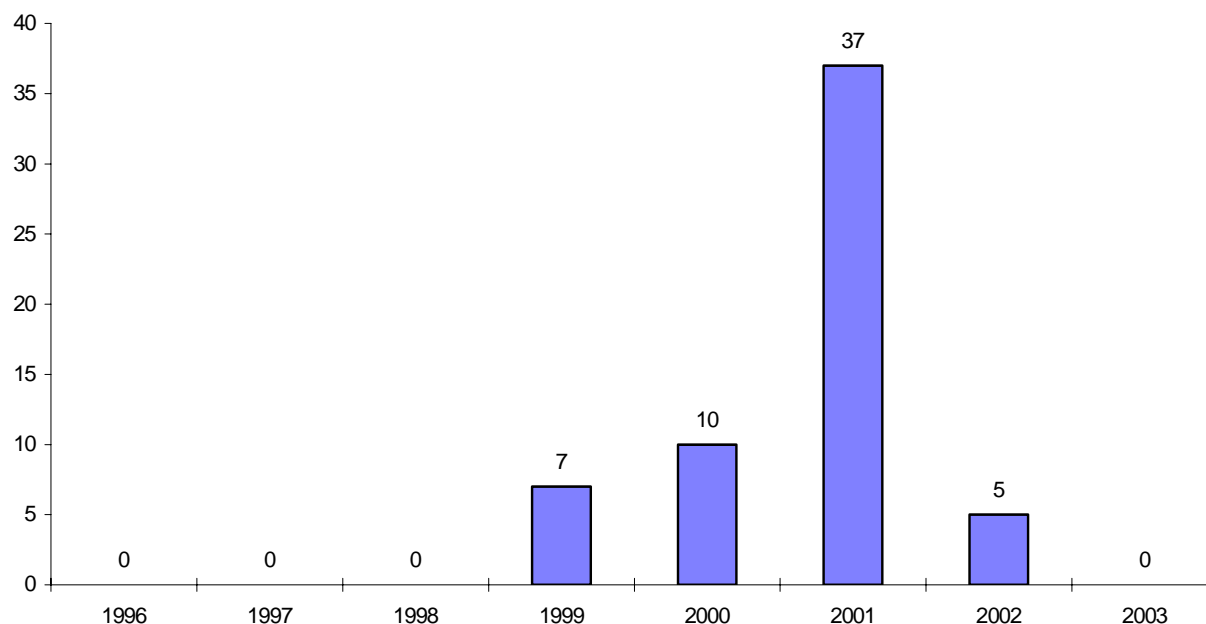


Figure 13

Figure 14



### FAMILIAL STATUS CHARGES RECEIVED



Charges of race discrimination declined for two years in a row, decreasing to its lowest level since FY 1997. Charges of sex discrimination declined to the lowest level since FY 1997. Retaliation charges increased to an all time high in FY 2002 but declined in FY 2003. While retaliation charges declined in FY 2003, they were at the fourth highest level in ten years. National Origin charges decreased in FY 2003, but were at the sixth highest level in ten years. Charges of disability discrimination increased to the second highest all time level. Age charges decreased from an all time highest level in FY 2002, but were at the third highest level in ten years. Religious discrimination charges hit an all time high in FY 2002, but were at the second highest level in ten years. Although disability, age and national origin charges represent smaller percentages of the total charges received over the last ten years, their actual numbers reflect startling growth. Disability discrimination charges grew as much as 27 % from ten years ago. Age discrimination charges grew as much as 67% percent from ten years ago, though down in FY 2003 from an all time high in FY 2002 that was 100% higher than in FY 1994. National origin charges grew 35 percent from 10 years ago. Sex discrimination charges grew 7% from ten years ago and race charges grew 17 percent from ten years ago.

## SECTION II

Thus far this report has focused upon how cases and charges are received into the process; how they are separated into the major areas of cases classification, and how they allocate themselves among various bases of prohibited discrimination. Next we will observe how the many cases and charges develop into workload, the disposition of the workload, and perhaps more importantly, the workload vis-a-vis staff resources.

Figure 15

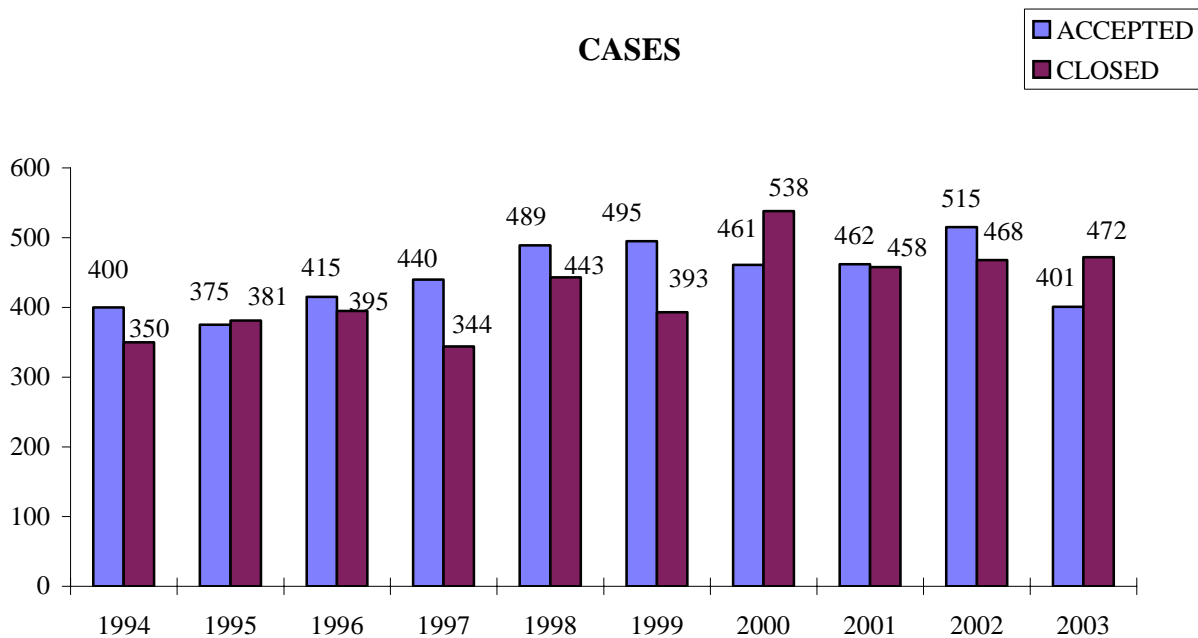


Figure 15 compares the numbers of new cases accepted by the Commission to the numbers of cases closed during the last ten years. As the numbers of cases increased, the staff management undertook a number of measures to increase the output of the staff investigators. In the process, the Executive Director set higher standards of performance and supported more productive employees.

It is significant to note here that the number of new cases accepted by the Commission each year began to decrease in FY 2000 for the first time in five years. In FY 2003 the Commission received the lowest number of cases in 10 years. At the same time, the staff had a significant increase in the productivity of resolving the highest number of cases in 10 years.<sup>4</sup>

<sup>4</sup> In FY 2003 the staff increased its productivity of resolved cases by 1 percent when compared to the previous year.

Figure 16

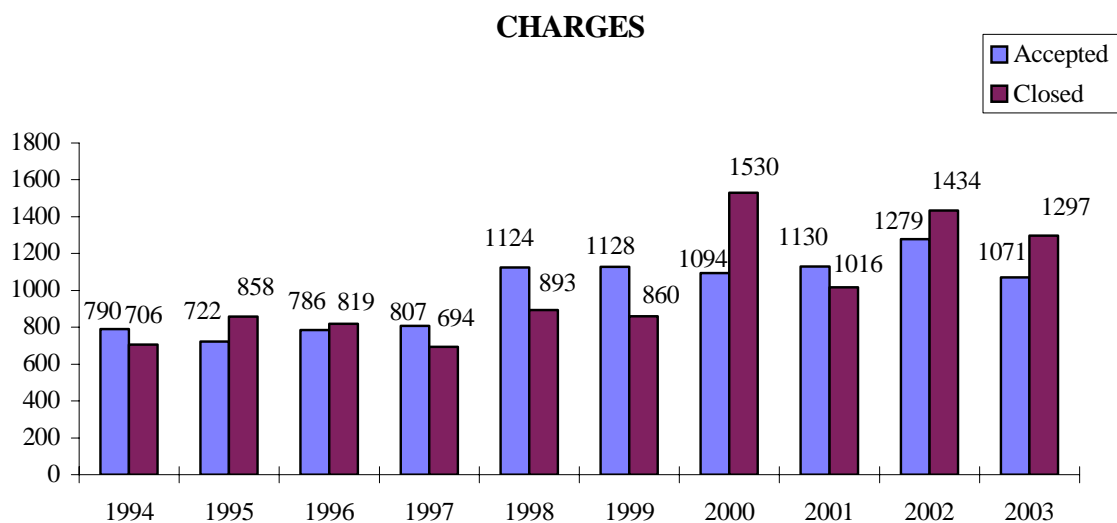
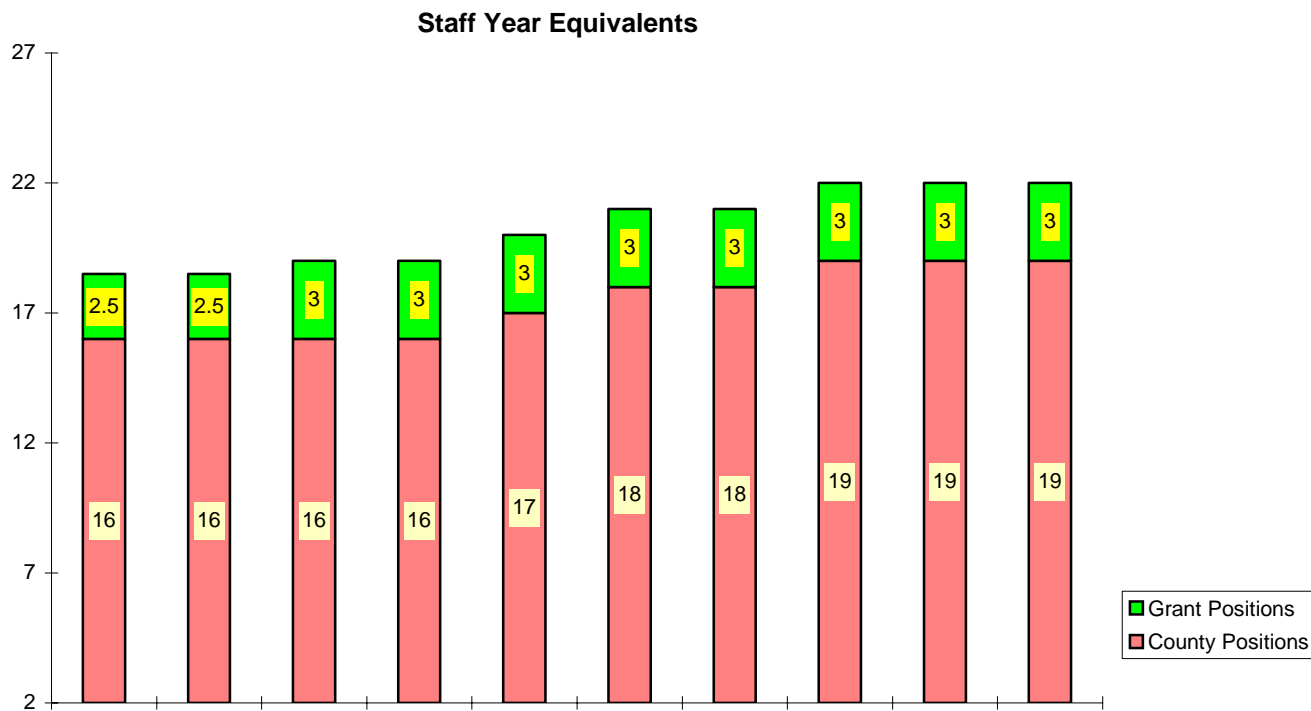


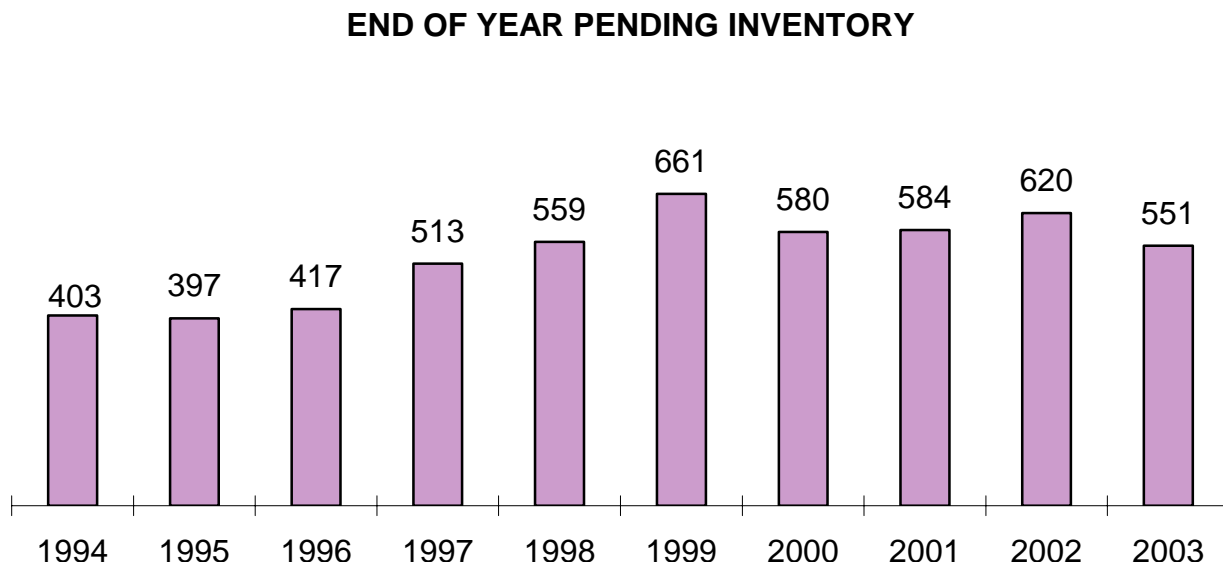
Figure 16 further depicts the disparity between the numbers of new charges accepted each year and those which are closed. It is not realistic to expect the difference to zero-out at the end of each year; however, because of the year-to-year disparity between the number of charges received and the number that exit the system, a substantial backlog remains. This is confirmed by a review of Figure 17, especially the years 1996 through 1999. In FY 2000 we begin to see a reversal in that trend, and in FY 2002 and FY 2003 the staff was able to close more charges than were taken in.

Figure 17



A review of Figures 1, 15 and 16 graphically displays how the caseload has grown since 1992, Two full-time and one half time investigator positions have been added to the staff since 1992. One support staff position was added in 1993 and a fair housing program manager was added in FY 1998. This brings the total staff count to 22 full-time equivalents (18 full-time and 2 part-time County paid staff and 3 full-time persons paid from EEOC grant funds). In FY 2003 the Commission had 13 investigator positions, 4 support staff positions, 2 supervisor positions, one housing program manager, a deputy director and an executive director.

Figure 18



The number of new cases coming to the Commission for investigation decreased in FY 2003 to the lowest level in ten years. While the number of cases decreased, overall number of charges per case was at the sixth highest level in ten years, adding complexity to the cases.<sup>5</sup> The good news is that the Commission's data shows that the staff closed more 71 more cases than it took in FY 2003. At present, the number of cases carried over from one year to the next exceeds the number of cases that the staff is capable of closing in a single year. However, if the trend continues, we expect to receive 450 cases and close 520 cases in FY 2004. While this will be great progress in eliminating the size of the pending inventory at the end of the year it will take another year or two to see if we are making good progress in reducing the amount of time it takes to process a case. We need to decrease the number of cases pending at the end of the year to less than 400 in order to significantly decrease the amount of time the respondents and complainants wait to have their cases resolved. It may take the addition of another staff person to do this; however, the Commission wants to assess the situation throughout the next year to see if that is the case.

Although there are still resource concerns because of the unmet caseload needs, the Executive Director and staff have applied innovative methods and personal determination to process as many cases as possible and bring equity and relief to many individuals. (See Figures 18-19 and 20.)

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<sup>5</sup> In FY 2003 the Commission received 2.67 charges per case as compared to 1.97 charges per case received in FY 1994.

Figure 19

In Figure 18 we see the numbers of persons who received money as part of the settlement of their cases.

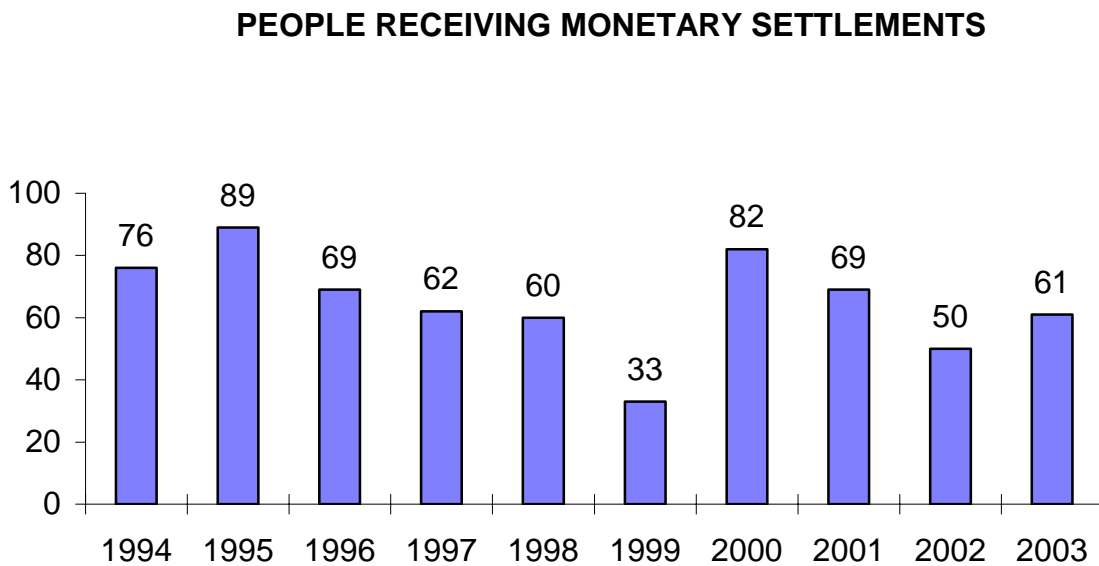
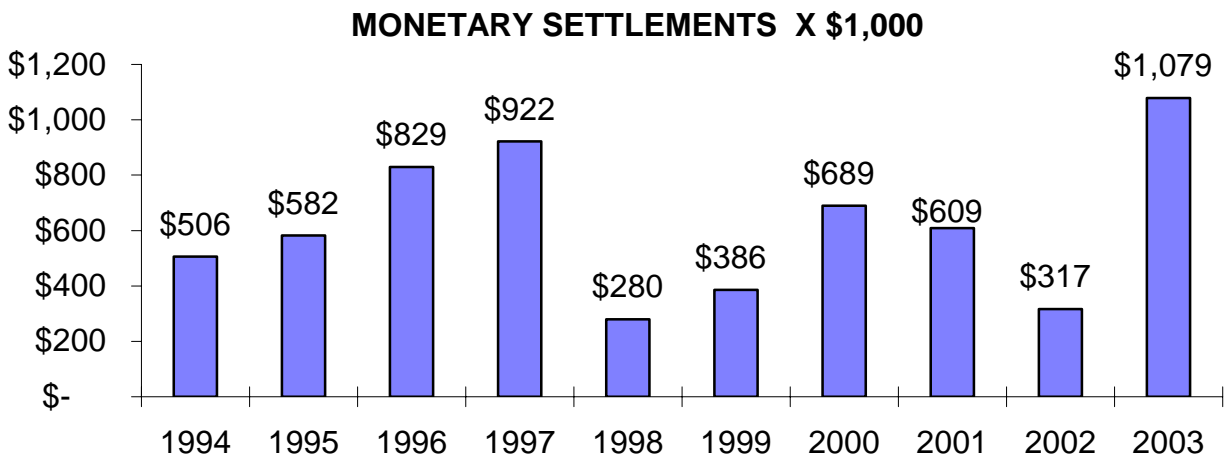


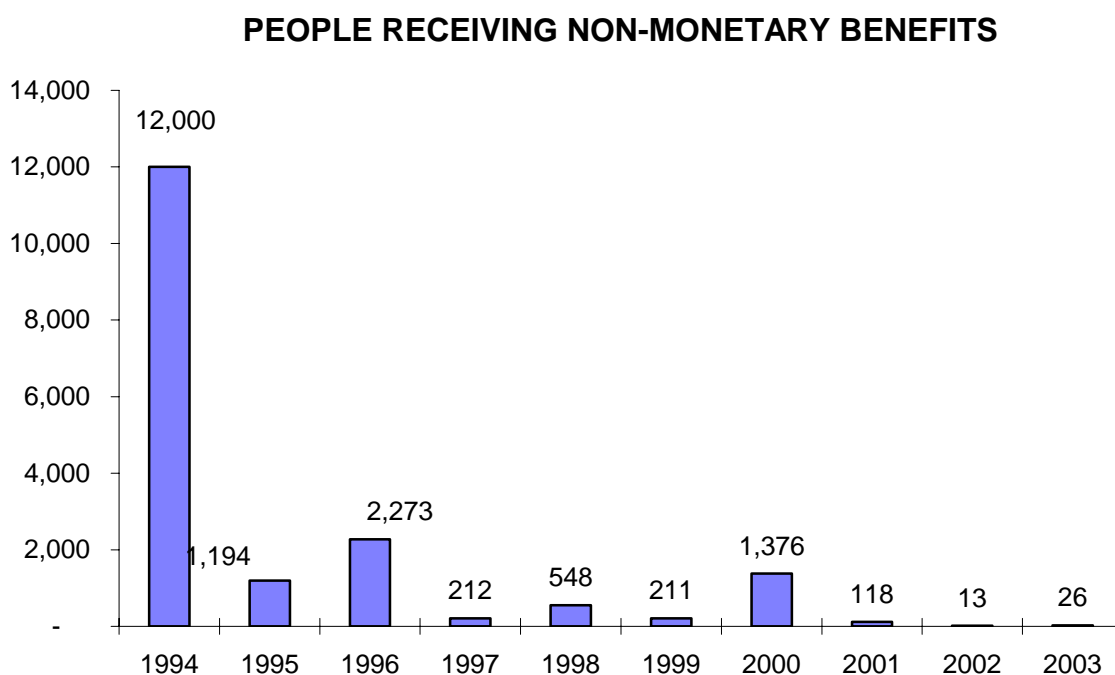
Figure 20



For the first time in the history of the Commission we topped \$1 million in settlements in FY 2003.

The largest monetary settlements in the last ten years occurred in a 2001 case involving race discrimination that was settled for \$300,000, a 1997 race discrimination case that was settled for \$200,000, and a 2002 sex discrimination case that was settled for \$190,000. All three cases involved employment discrimination.

Figure 21



When a case is settled, in addition to the relief granted to the complainant, settlement agreements often include a commitment on the part of the respondent to take some deliberate corrective action that has the effect of improving the environment for all of the employees in a company or tenants in an apartment complex, etc. The benefits resulting from these actions are non-monetary in nature. A corrective action may result in a simple policy change with regard to an employment practice that was found to be in violation of the ordinance. Another type of corrective action may involve training of the company's management personnel in matters relating to the kinds of employment decisions permitted under the law. Such actions are considered to affect all of the employees or tenants and improves fairness regarding the terms, conditions, and benefits of their employment or tenancy.

In FY 1994 we settled cases with national cinema chains that resulted in making all of the company's theaters accessible. The companies calculated that at least 100,000 people across the country benefited from the changes annually. Though these benefits still exist, we calculate the benefits for only one year.

### APPEALS

The Fairfax County Human Rights Ordinance provides for an appeal process that allows a complainant who is not satisfied with the staff's decision to request that the decision be reviewed by the Commissioners. The appeal has always been available and well used, but the Commission has collected data on this process for only the last nine years. The staff preparation in support of scheduled appeals involves a significant amount of time, including overtime pay for the investigators attending the appeals. Because the numbers of appeals have increased significantly in the past few years, this part of the Commission's work is consuming an ever greater share of the available resources and deserves notice in this report.

During the appeal, complainants may be represented by counsel, but may choose to represent themselves. At this point the complainant has an opportunity to point out to the Commissioners why the evidence was misinterpreted or inappropriate or that there was some shortcoming in the investigation and that these factors adversely affected the outcome of the investigation.

	Appeals Scheduled	Appeals Held	Percent of Scheduled
1994	23	16	69.6%
1995	31	27	87.1%
1996	24	21	87.5%
1997	26	23	88.46%
1998	14	13	92.86%
1999	27	22	81.48%
2000	13	12	92.3%
2001	14	13	92.8%
2002	19	17	94.7%
2003	22	22	100.0%

Usually the Commission meets only twice per month; however, additional meetings still take place when needed. Some scheduled appeals never take place because the complainant fails to show or the complainant withdraws the request for appeal prior to the date and time the appeal is to be heard. Also, appeals may be canceled because the complainant fails to respond to attempts of contact by the staff before the appeal is to be heard.

### PUBLIC HEARINGS

Sections 11-1-11 through 11-1-13 of the Fairfax County Human Rights Ordinance provides for the holding of a public hearing in order to determine if there are reasonable grounds to believe that a violation of the ordinance has occurred. The public hearing is another area where the staff, the Commissioners and the Office of the County Attorney expend a significant portion of available resources in preparation, execution, debating, reaching a decision, and issuing findings and recommendations.

The public hearing is an investigative tool that the Commissioners use to determine the facts in a case that has not otherwise been resolved by staff action. The public hearing is a de novo process where both sides have an opportunity to present their evidence and witnesses to the Commissioners and to cross-examine the opposing witnesses. As a result of these hearings, the Commission issues a decision, and based on case law recommends a settlement of the case. When the case is not settled after a public hearing, the Commission may recommend that the Board of Supervisors pursue enforcement of the ordinance in the courts. Since 1994, there has only been one occasion when the Commission found it necessary to take this drastic step.

Hearings Scheduled	Hearings Held	Percent of Scheduled
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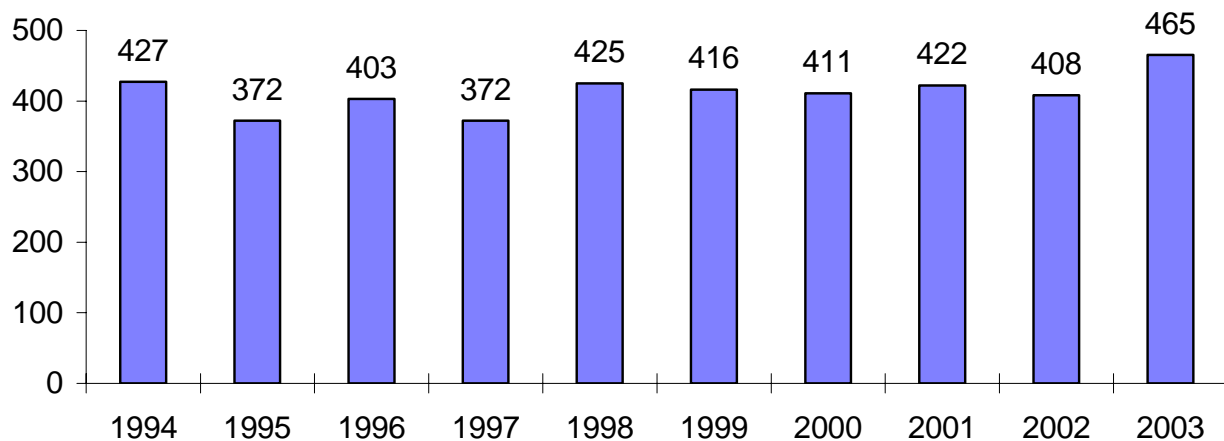


1994	11	7	63.6%
1995	9	6	66.7%
1996	11	5	45.5%
1997	2	0	0.0%
1998	5	4	80.0%
1999	1	0	0.0%
2000	0	0	0.0%
2001	0	0	0.0%
2002	2	0	0.0%
2003	5	3	60.0%

Many times, after a public hearing is scheduled and advertised and before it actually occurs, the parties will reach a settlement.

Figure 22

### Average Processing Time in Days



Finally, after all of the staff and management efforts over the years to minimize case processing time, the average number of days it takes to completely process a case through the investigative procedures rose to and remained around the 400 day mark since 1989. The longer it takes to conclude an investigation, the less value there is to the service the County provides for the respondents and complainants. The Commission projected that the average number of days it takes to process a case would hover around 400 – 425 days in FY 2003. However, the number of days actually increased 465 during FY2003 due to staff turnover and staff's concerted effort to reduce the number of older cases. The good news is that staff continued to close more cases than were received each year during FY 2002 and FY 2003 and continues to decrease the number of older cases that resulted from staff turnover. With a continuation of this trend, the amount of time it takes to process cases has begun to fall and should fall sharply in FY 2004 and beyond, due to the reduction, in the number of pending cases carried forward into the next year.

As this report shows, allegations of discrimination are not going away. The need to investigate and resolve them efficiently according to law is paramount to a society that values equal opportunity.

